

CHAPTER I

HAZARDOUS MATERIALS CONTROL BYLAW

11. AUTHORITY, PURPOSE AND DEFINITIONS

11.1 Authority

This Bylaw is adopted by the Town under its Home Rule Authority, its Police Powers to protect the public health safety and welfare and its authorization under Massachusetts General Laws, (MGL) Chapter (c) 40, section 21, MGL CHAPTER 111, section 31, and MGL, Chapter 148, sections 9 and 13.

11.2 Purpose

The purpose of this Bylaw is to protect, preserve, and maintain the Town's existing and potential groundwater supply, groundwater recharge areas, surface waters, air quality and natural environment and to assure public health and safety through the proper management of hazardous materials and waste.

11.3 Definitions - *The following terms shall be the following meanings in this Bylaw:*

- 1.3.1 "Abnormal Loss of Material or Waste"** *means a loss of greater than .05% of the material stored over a period of one calendar month, unless such limit is undetectable in which case the Board of Health shall set the limit.*
- 1.3.2 "Biodegradable"** *means a product or material which decomposes at a significant rate into nontoxic materials by natural biological processes.*
- 1.3.3 "CMR"** *means the Code of Massachusetts Regulations.*
- 1.3.4 "Container"** *means any portable device in which hazardous materials or wastes are stored, transported, treated, disposed of or otherwise handled.*
- 1.3.5 "DEP"** *means the Department of Environmental Protection and/or its successors.*
- 1.3.6 "Discharge"** *means the disposal, deposit, injection, dumping, spilling, leaking, escape, incineration or placing of any hazardous material or waste, into or on the land, water or air. Discharge includes, without limitation, leakage of such hazardous materials or wastes from containers, tanks or storage systems, or disposal of such materials or wastes into any sewage disposal systems, dry well, catch basin or landfill.*
- 1.3.7 "Fire Chief"** *means the Fire Chief of the Town of Acton and shall include any designee of the Fire Chief.*

CHAPTER I *HAZARDOUS MATERIALS CONTROL BYLAW* CONTINUED

(11.3 Definitions - Continued)

- 1.3.8** *"Hazardous Material or Waste" means any substance, including petroleum or derivatives thereof, or combination of substances which because of their quantity, concentration, physical, chemical, infectious, flammable, combustible, radioactive, genetic or toxic characteristics, may cause or significantly contribute to a present or potential risk to human health, safety, or welfare, to the groundwater resources, or to the natural environment. Any substance regulated under applicable Acton Board of Health regulations and under any State or Federal laws and regulations regulating hazardous, chemical, biological or waste materials, or any amendments thereof, shall be considered hazardous material or waste.*
- 1.3.9** *"Owners or Operators" means each and every person who alone or severally with others has legal title to any property on which is located any hazardous material or waste subject to this bylaw; or a tenant, licensee or person in possession, who has care, charge or control of any such property, in any capacity including without limitation agent, executor, administrator, trustee or guardian of the estate of the holder of legal title; or agent, trustee or a person appointed by a court of competent jurisdiction; or a mortgagee in possession of such property. Each and every such person is bound to comply with the provisions of this bylaw as if he were an owner.*
- 1.3.10** *A "Hazardous Material Generator" means any commercial enterprise, government agency, owner or operator who produces, prepares, imports or compounds hazardous material or waste by combining previously non-hazardous materials to create hazardous materials.*
- 1.3.11** *A "Hazardous Material User" means any commercial enterprise, government agency, owner or operator who utilizes hazardous materials or waste, for any purposes other than those specifically exempt from the requirements of this bylaw under section 2.2.*
- 1.3.12** *"Storage" means the holding of any hazardous materials or wastes for more than 24 hours.*
- 1.3.13** *"Storage System" means one or more tanks(s), and all connecting pipes, valves or other devices appurtenant thereto.*
- 1.3.14** *"Tanks" means any stationary device used to store or to contain an accumulation of hazardous materials or wastes.*
- 1.3.15** *"Underground Storage System" means a system in which any or part of any of the tanks, connecting pipes, valves or other devices are buried below the surface of the ground unless otherwise specified by the Board of Health.*

12. PROHIBITIONS, DISCHARGE REPORTING AND REMEDIAL ACTIONS

12.1 Prohibitions

- 2.1.1** *There shall be no discharge of hazardous materials or wastes within the Town of Acton through land, water, or air transmission without a permit for such action by an authorized agent of a federal or state agency or without a hearing from the Board of Health unless otherwise excepted or exempted under this bylaw.*

CHAPTER I *HAZARDOUS MATERIALS CONTROL BYLAW* CONTINUED

(12.1 Prohibitions - Continued)

- 2.1.2** *There shall be no discharge of hazardous materials or wastes within the aquifer protection Zones 1,2,3, as delineated in the Section 4.3 of the Acton Zoning Bylaw, as printed on May 1, 1990 and subsequent amendments thereof, either through land, water or air transmission unless otherwise excepted or exempted under this bylaw.*
- 2.1.3** *There shall be no new installations of underground storage tanks for hazardous materials or waste within the aquifer protection Zones 1 & 2 as delineated in the Section 4.3 of the Acton Zoning Bylaw, as printed on May 1, 1990 and subsequent amendments thereof; or within the flood plain, defined by the Federal Emergency Management Agency "Flood Insurance Study, Town of Acton" January 6, 1988, as amended; or within 500 feet of a surface water body, wetland or private well. Replacement of underground storage tanks for flammable materials that pre-exist this bylaw shall be allowed only after the Fire Chief or his designee determines that aboveground storage of the flammable and/or combustible material would create a fire and/or explosion hazard.*
- 2.1.4** *No area within which hazardous materials or waste are used, stored or generated may contain a floor drain that leads to a storm drain or a septic system. Floor drains in such areas shall drain into containment vessels for removal by a DEP approved hazardous waste carrier. All other drains shall be permanently sealed off.*
- 2.1.5** *No residues or waste waters resulting from hazardous material or waste spill clean up procedures shall be disposed of into drains or other facilities leading to storm drains or septic systems or into the Acton Transfer Station. All such residues and waste waters shall be contained for removal by a DEP approved hauler.*

12.2 Exceptions

Applications of fertilizers, herbicides and pesticides used in accordance with applicable local, state and federal regulations shall be exempt from Section 2 of this bylaw, applications of deicing chemicals in conformance with the Massachusetts Snow and Ice Control Program, applications of swimming pool chemicals, and applications of water treatment chemicals by the Acton Water District. Storage of such chemicals, however, shall not be exempt from the appropriate storage requirements of Section 3 of this bylaw. This bylaw shall not apply to discharge of ordinary sanitary wastewater into a septic system installed in accordance with applicable State and local regulations or to ordinary uses of household or garden products used in accordance with applicable labeling instructions from state and federal law. Nothing in this bylaw prohibits the Board of Health from limiting or prohibiting the use of any such product by appropriate regulations.

12.3 Reporting of Discharges

Owners or operators shall immediately report any discharge or abnormal loss of hazardous materials or waste and shall provide a reasonable estimate of the nature and quantity of the discharged hazardous materials or wastes and supply pertinent Material Safety Data Sheet's to the Fire Chief, the Health Director, Civil Defense and Local Emergency Planning Committee and the appropriate office in the D.E.P. These reporting requirements are in addition to all State and Federal reporting requirements.

12.4 Remedial Actions Following Discharges

- 2.4.1** Any discharge of hazardous material or waste shall be immediately contained and reported. Clean up activities of significant discharges shall be taken under the direction of the Fire Chief, Health Director and/or other applicable agency. Clean-up and proper disposal of any discharged or abnormally lost hazardous material or waste shall be the responsibility of the owner or operator, hazardous material generator, or user including cost of the cleanup and disposal.
- 2.4.2** Following the immediate assessment according to section 2.3 and containment of any hazardous material or waste discharge a detailed report on the spill, remedial procedure plan and a schedule for all ongoing clean up actions to be undertaken shall promptly be submitted to the Fire Chief and the Board of Health. Action shall not be taken unless the Fire Chief and Board of Health deem that the remedial procedure will not contribute to a fire, explosion and/or environmental hazard. A detailed report on the spill and a remedial plan shall be submitted to the Fire Chief.
- 2.4.3** Collection and disposal of contaminated material shall be conducted by a handler that is licensed by the DEP.

13. Permits and Accounting for Hazardous Materials and Waste

13.1 Permits For Hazardous Materials and Waste

Any hazardous materials or waste generator or user of hazardous materials or waste which exceeds the thresholds in s. 3.1.1., including residential tanks as specified in s. 5.3.4, must obtain a permit from the Board of Health to store, use or generate hazardous materials or wastes. The permit shall be granted for one year, and may be renewed by the Health Director, unless there has been a substantial change in the quantity, type or method of storage, generation or use, or the Health Director concludes for any reason that reissuance of the permit should be reviewed by the Board. This permit shall be in addition to any license required in accordance with M.G.L. Ch. 148, s. 13 and/or any permit required in accordance with 527 CMR 14.00 or any other Fire Prevention Regulation.

- 3.1.1** A permit must be obtained for hazardous materials and wastes when use, generation or storage are above the following thresholds:
- 1)** Small scale or large scale generator as defined in the Massachusetts Hazardous Waste Management Act, MGL Ch 21C, and the Federal Resource Conservation and Recovery Act 42 U.S.C., Section 6901 et seq or as defined in any subsequent amendments or new regulations; or generation in excess of 100 kg/mo of hazardous waste or materials, whichever is the smallest quantity.
 - 2)** Any storage or use within a twenty-four hour period exceeding 25 gallons liquid volume or 25 pounds dry weight of any hazardous material or waste except for retail sale.
 - 3)** Storage, use or generation of any quantity of any chemical on The List of Extremely Hazardous Materials, as published in the Federal Register Volume 52, Number 77, April 22, 1987, and any additional chemicals added subsequently.
 - 4)** Storage of any hazardous materials or waste overnight in delivery trucks or tank trailers.
 - 5)** Storage of more than 50 gallons or 50 pounds dry weight of any prepackaged hazardous materials for retail sale.

13.2 Information Required For A Hazardous Materials and Waste Permit Application

The following information shall be supplied with the application for a permit:

- 3.2.1** *A list of the size, type, age and location of each container or tank. Evidence of the date of purchase and installation shall be included for existing storage systems, along with a plot plan showing the location of all containers, tanks, drains and piping on the property. In complex applications the Health Department and/or the Board of Health, may require a plot plan certified by a Professional Land Surveyor. Any changes in the information contained in the initial application, including any change in the use of the storage system, shall be reported immediately.*
- 3.2.2** *A list of daily amounts stored, used or generated and estimate of yearly throughput of all hazardous materials and waste to be used, stored or generated on the site, and copies of pertinent Material Safety Data Sheets.*
- 3.2.3** *Documentation stating that all information previously filed with the Board of Health is correct, or indicating a change in the status of the existing permit shall be submitted annually. A new permit shall be obtained within thirty days from the Board of Health whenever:*
 - a.** *there is any change in the type or method of generation, use or storage, or significant change in the quantity or composition of hazardous materials or wastes previously permitted.*
 - b.** *the method of storage, generation or use fails to comply with information previously submitted to the Board of Health.*
- 3.2.4** *The Board of Health may require additional information if it is necessary to adequately evaluate the application.*

13.3 Exceptions to Permit Requirement.

Permits shall not be required under this bylaw for the following:

- a)** *Septic Systems*
- b)** *Gasoline and diesel fuel stored in tanks mounted on a vehicle and used solely to fuel the same vehicle.*
- c)** *Hydraulic oil reservoir tanks on heavy vehicular equipment.*
- d)** *Use of domestic biodegradable cleaners for residential and business maintenance.*
- e)** *Residential oil tanks in place and in use prior to passage of this bylaw. New residential oil tanks require permits as noted in section 5.3.4 of this bylaw, provided that a permit has also been obtained from the Fire Chief.*

13.4 Hazardous Materials and Waste Permit Conditions

The Board of Health may impose conditions on any storage permit as necessary to serve the purposes of this bylaw or to protect the public health and environment.

13.5 Requirements for Approval of Hazardous Material and Waste Permits

3.5.1 *Hazardous materials and waste permits with the exception of residential home heating oil tanks, shall be granted by the Board of Health only if the following criteria are fulfilled:*

- a. *The proposed storage, use or generation system shall provide adequate discharge prevention safeguards which are appropriate to the materials and wastes to be stored, used or generated and to the location of the storage, use or generation.*
- b. *The proposed storage, use or generation system shall comply with all local, state and federal regulations.*
- c. *The proposed storage, use or generation system shall not cause a threat to the public health and safety or to the environment.*
- d. *The applicant has established a satisfactory hazardous materials and waste discharge contingency plan.*
- e. *All hazardous materials or wastes to be stored above ground shall be stored in product tight containers on an impervious, chemical resistant surface, under cover and sheltered from the weather unless otherwise specified by the Board. The storage area shall be enclosed with a permanent dike of impervious construction providing a volume of at least 100% of the maximum volume of the largest single container or tank plus 10% of the total storage capacity. All outdoor storage areas shall be surrounded by a 5 foot fence, at a minimum, and shall be kept locked at all times when unattended.*
- f. *Hazardous Waste shall be held on the premises for removal by a licensed carrier in accordance with the Massachusetts Hazardous Waste Management Act, MGL Chapter 21C.*
- g. *Owners or Operators shall park delivery trucks or tank trailers only in designated overnight parking areas approved by the Board of Health and Fire Department. These parking areas must allow for detection and containment of discharge from the parked vehicles that are acceptable to the Board of Health and Fire Department.*

13.6 Inventory and Monitoring of Above Ground Storage Systems

All hazardous materials stored above ground, with the exception of residential home heating oil tanks, shall be monitored weekly unless more frequent monitoring is specified in the permit. Monitoring shall consist of a thorough visual inspection of the container(s) and tank(s) and stock(s) of materials as well as the dike area for deterioration, leakage or unaccounted for loss of materials.

13.7 Record Retention

Throughout the permit period, owners, users, generators, or operators shall keep copies of all Hazardous Waste Transport Manifests on-site, as required under the Resource Conservation and Recovery Act 42 U.S.C., Section 6901 et seq. and the Massachusetts Hazardous Waste Management Act MGL Chapter 21C, 315 CMR, Section 2.04. If a hazardous waste generator is exempt from the manifest requirements sufficient proof of a proper disposal method shall be maintained.

CHAPTER I *HAZARDOUS MATERIALS CONTROL BYLAW* CONTINUED

14. Underground Storage of Flammable or Combustible Products and Hazardous Materials or Wastes

14.1 Underground Storage Requirements

- 4.1.1** *Owners or operators storing flammable or combustible materials in underground storage systems shall obtain a permit from the Fire Chief in addition to the Hazardous Material Permit from the Board of Health required under Section 3. Owners and operators storing hazardous materials or wastes underground which are not flammable or combustible need only obtain a permit from the Board of Health under section 3.*
- 4.1.2** *Any discharge or abnormal loss of material from underground storage systems shall be reported to the Fire Chief, the Health Director and the appropriate office in the D.E.P. immediately upon detection.*
- 4.1.3** *Response procedures to any discharge or abnormal loss of material from underground storage system shall follow the requirements of 527 CMR Section 9.20 or 310 CMR s. 30.697, whichever is applicable. In the case of any hazardous material for which response procedures are not specified under state law, response procedures shall be those required for hazardous wastes under 310 CMR s. 30.697, unless otherwise specified by the Board of Health.*
- 4.1.4** *Prior to any change in the material stored in an underground tank, such change of material shall be approved by the Health Department and (in the case of flammable or combustible materials) by the Fire Chief. Confirmation by the tank manufacturer that such a change in material would be compatible with the tank type shall also be submitted, in writing, to the Board/Fire Chief.*

14.2 Underground Tank Construction

- 4.2.1** *All underground storage tanks shall be designed to minimize the risk of corrosion and leakage, and shall conform to all construction and installation requirements under applicable state and federal law. All new underground storage systems for hazardous materials or waste shall meet the standards for new underground hazardous waste tanks set forth in 310 CMR s. 30.693 and 30.694, unless otherwise specified by the Board of Health. Hazardous wastes or waste products that are flammable or combustible shall meet 527 CMR 9.*
- 4.2.2** *All nonconforming tanks (except as provided in 5.3.3) shall be brought into conformance by January 1, 1999, or a tank age of 20 years, whichever comes first.*
- 4.2.3** *Installation procedures for all underground storage tanks shall conform to all requirements under applicable state law. Installation procedures for any underground tanks for any hazardous materials not covered by state regulations shall comply with the requirements in 310 CMR s. 30.693 for installation of tanks for underground storage of hazardous wastes, unless otherwise specified by the Board of Health.*
- 4.2.4** *The Board of Health may require the placement of monitoring wells around any underground storage tank located within any aquifer zone as delineated in Section 4.3.2 of the Groundwater Protection District section of the Acton Zoning Bylaw as printed on May 1, 1990.*

15. Testing, Monitoring, and Removal Requirements for All Underground Storage Tanks

15.1 Underground Tank Testing

- 5.1.1** *All underground tanks which do not conform to the requirements for new tank installations in section 4.2.1 shall be tested for tightness at the expense of the owner. Testing schedules, except as provided in 5.3.3, shall follow the requirements of 527 CMR Section 9.13 in the case of flammable or combustible materials. Tanks for other hazardous materials or waste shall be tested annually or more frequently if required by the Board of Health.*
- 5.1.2** *Test results for tanks storing flammable or combustible materials shall be submitted to the Fire Chief and the Health Department. Test results for tanks storing hazardous materials or wastes which are not flammable or combustible shall be submitted to the Health Department.*
- 5.1.3** *Prior to its transfer all underground storage tanks located on a property shall be tested for tightness at the expense of the owner. The results of such testing shall be submitted to the Fire Chief and to the Board of Health, and kept on file.*
- 5.1.4** *The Fire Chief or the Health Director may request to be present for any tank testing procedures.*

15.2 Inventory and Monitoring of Underground Storage Tanks

- 5.2.1** *Inventory and monitoring of underground tanks for storage of flammable and combustible materials shall conform to the requirements of 527 CMR s. 9.11 and 9.12. Inventory and monitoring of underground tanks for storage of other hazardous materials not covered by 527 CMR s. 9.11 and 9.12 shall conform to the requirements in 310 CMR s. 30.692, unless otherwise specified by the Board of Health.*

15.3 Underground Tank Removal

- 5.3.1** *Removal procedures for tanks for storage of flammable or combustible materials shall follow the requirements of 527 CMR 9.22 and 9.23 as well as 502 CMR 3.00.*
- 5.3.2** *Removal procedures for tanks for the storage of hazardous materials or waste which are not flammable or combustible shall conform to the procedure in 310 CMR s. 30.699 for removal of hazardous waste tanks unless otherwise specified by the Board of Health.*
- 5.3.3** *All residential underground storage tanks shall be removed at a tank age of 20 years, unless the structure of the tank is sound. Proof of soundness must consist of results of a tightness test which follows the requirements of 527 CMR Section 9.13 and must be provided annually to the Board and the Fire Chief beginning the twentieth (20th) year of the tank's life.*
- 5.3.4** *No underground residential home heating oil tanks shall be repaired and placed back in service. Any such tank which is in need of repair shall be removed and replaced by an above ground storage system. All replacements of residential home heating oil tanks shall require a permit under Section 3 of this bylaw, and are not excepted by paragraph 3.3 (e).*
- 5.3.5** *No underground storage system which has leaked shall be relined, repaired or continued in use. Tanks which have leaked or need repair shall be removed.*

CHAPTER I **HAZARDOUS MATERIALS CONTROL BYLAW** CONTINUED

15.4 Information required with Application for Underground Storage Permit

Applications for permits from either the Board of Health or the Fire Chief must include appropriate drawings showing the location of all tanks in relation to the aquifer protection zones delineated in section 4.3.2 of the Groundwater Protection District section of the Acton Zoning Bylaw as printed on May 1, 1990. The location of all tanks shall conform to all applicable legal requirements, including but not limited to the Groundwater Protection Bylaw and the Aquifer protection regulations and other regulations of the Board of Health.

16. Administration and Enforcement

16.1 Compliance with Hazardous Materials Permit Requirements

- 6.1.1** *Owners or occupants of new premises shall obtain a hazardous materials permit from the Board of Health, licenses from the local licensing authority and permits from the Fire Chief prior to occupying the premises.*
- 6.1.2** *Existing Premises - Owners or occupants of existing premises shall obtain a hazardous materials permit by January 1, 1992, or upon any change in use or occupancy of the site, whichever comes first.*

16.2 Cessation of A Permit

- 6.2.1** *The holder of a hazardous materials and waste permit shall notify the Board of Health immediately, in writing, whenever the activities authorized under the permit cease on a permanent basis.*
- 6.2.2** *When an underground storage tank for the storage of flammable or combustible materials is taken out of service for more than six months, the fire chief shall require that the tank be removed in accordance with 527 CMR, Section 9.22 and 9.23. Any underground storage tank for the storage of other hazardous materials or wastes shall be removed in accordance with the procedures in 527 CMR s. 9.22 and 9.23 unless otherwise ordered by the Board of Health.*

16.3 Promulgation of Rules and Regulations

The Board of Health may from time to time pass regulations specifying categories of materials which are hazardous materials or wastes under the definition in s. 1.3.8 of this bylaw. The Board may adopt or amend rules and regulations consistent with the provisions of this bylaw. A copy of such rules shall be filed with the Town Clerk.

16.4 Fees

Fees necessary for the issuance and renewal of permits or licenses under this bylaw shall be set by the Board of Selectmen. Fees shall be due on the date of annual registration and collected by the permit or license granting authority. Failure to pay shall constitute a violation and shall subject the violator to the penalties of Section 6.7 of this bylaw.

16.5 Variance

A variance from time the terms of this bylaw may be granted by the permit granting authority after notice to abutters and a public hearing, if it is found that a variance would satisfy each of the following conditions:

- 1) consistency with the public health and environmental protection objectives of the Massachusetts General Laws and applicable federal, state and local regulations.*
- 2) consistency with the purpose and intent of this bylaw.*
- 3) prevention of an undue burden on the permit applicant, and*
- 4) equivalent protection as envisioned in section 1.2.*

16.6 Enforcement Access

The authority granting the permit of its designee may, upon reasonable notice to the occupant of the premises enter any premises for the purpose of investigating, sampling, or inspecting any record, condition, equipment, practice, or property relating to activities subject to this bylaw. The permit granting authority may enter any premises for the purpose of enforcing this bylaw.

16.7 Penalty

Any person who violates any provision of this bylaw shall be punishable by a fine of not more than \$300.00, as allowed under MGL Chapter 40, Section 21. Each day during which a violation continues shall constitute a separate offense, and each condition of this bylaw violated shall constitute a separate offense. This penalty may be imposed by the Town of Acton Board of Selectman, or a designated officer having police powers pursuant to MGL. Chapter 40, Section 21D.

17.1 Severability

Each provision of this bylaw shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.